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Attachment No. 2

## **INITIAL STATEMENT OF REASONS**

### **CALIFORNIA CODE OF REGULATIONS**

TITLE 8, Division 1, Chapter 4, Subchapter 5, Article 17, Section 2813 of the  
High-Voltage Electrical Safety Orders

### **Underground Vaults - Headroom Clearance**

#### **SUMMARY**

This staff-initiated rulemaking proposal is the result of an e-mail from Mr. Julian Ajello of the California Public Utilities Commission who forwarded an inquiry from the City of Palo Alto regarding a discrepancy between Title 8, Section 2813 and the California Public Utilities Code (PUC) pertaining to the minimum height requirement inside a manhole. Existing Section 2813 refers the reader to underground vault dimensions stipulated by the PUC which is incorporated by reference.

The PUC requires a floor to ceiling height of not less than 5 feet for underground electrical facilities. Section 2813 directs compliance with PUC dimensions, yet specifies a headroom clearance of not less than 6 ½ feet. This conflict in headroom clearance dimensions causes confusion and limits or challenges regulatory compliance.

Federal OSHA's height requirements for workspace about electrical equipment under 29 Code of Federal Regulations (CFR) Section 1910.303(h)(3) is 6 ½ feet. Labor Code Section 142.3(a)(2) mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues. The proposed amendments will align Section 2813 to be consistent with the federal standard with regard to the headroom clearance issue.

#### **SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

##### **Section 2813. Underground Vaults.**

Existing Section 2813 provides the general requirements relating to the minimum size of any manhole, subway, chamber, or underground room containing any electrical wiring or equipment and outside access opening.

This rulemaking action proposes amending the first paragraph of Section 2813 which references Sections 8051 through 8057 of the PUC regarding underground room dimensions. The proposal directs the reader to follow the existing subsections (a) and (b) instructions for inside vault

measurements and access opening dimensions. Also, this proposal deletes the last sentence of the first paragraph to clarify that the dimensions specified in subsections (a) and (b) differ from and are not extracted from the PUC statutes.

This proposal is necessary to address the discrepancy of the minimum height requirements between existing Section 2813 and the PUC and will provide consistent state and federal minimum height requirements for underground vaults.

It is proposed that the no-longer-required parenthetical reference to Title 24, Part 3, Section 3-110-37 also be deleted. The Board makes on-going efforts to eliminate these needless Title 24 cross-references. This proposed deletion is without regulatory effect.

#### DOCUMENTS RELIED UPON

1. Email from Michael Mason to Conrad Tolson, dated June 17, 2009, and related, attached, prior email message from Julian Ajello, dated June 15, 2009.
2. Email from Conrad Tolson to David Johns, dated August 6, 2009, and related, attached, prior email messages.
3. California Public Utilities Code, Division 4, Chapter 5, Article 3, Sections 8051-8057.
4. Code of Federal Regulations (CFR) 29, Section 1910.303(h)(3), Workspace About Equipment.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

#### DOCUMENTS INCORPORATED BY REFERENCE

None.

#### REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

#### SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

#### COST ESTIMATES OF PROPOSED ACTION

##### Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique

requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

#### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

#### ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.